

Application No. 10/791,849
Art Unit: 3761

Attorney Docket No. 24295.00
Confirmation No. 5306

REMARKS

By the present amendment, Applicant has amended Claims 1, 6, 7 and 12, cancelled Claims 13-16, and added Claim 17. Claims 1-12 and 17 remain pending in the present application. Claim 1 is the sole independent claim.

Applicant appreciates the courtesies extended to Applicant's representative during the telephonic interview held February 10, 2005. Prior to the interview a proposed amendment was presented to the Examiner for review. The interview was held between Examiner M. G. Bogart and Attorney L. Babu. The present response summarizes the substance of the interview and the agreement reached. Proposed amended Claim 1 incorporated portions of Claim 6 to further define each of the legs as comprising --a rectangular panel having a front edge, a rear edge, an inner edge joined to the central portion, and a bottom end adapted to form leg openings --. The claimed elastic material was redefined as being --disposed about at least a portion of the inner edge of each leg--. During the interview, arguments were advanced that the prior art of record failed to disclose the essential features of Applicant's claimed invention, particularly the leg structure and the disposition of the elastic material. The Examiner agreed that Kikuchi only showed elastic material fitted around the leg openings and indicated that the proposed amendment to Claim 1 would be allowable over the applied references if the language from the original claim defining the elastic material as being located "between the legs and at least a portion of the thigh openings" were reinserted.

In the recent Office Action the Examiner rejected Claims 1-4, 7, 8 and 11-16 under 35 U.S.C. § 103(a) as being unpatentable over Kikuchi (U.S. Patent No. 5,921,974) in view

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of Valentin et al. (US 2002/0183706 A1). Claim 9 had been rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Kikuchi in view of Valentin et al., further in view of Weisman et al (U.S. Patent No. 4,673,402). However, the Examiner indicated Claims 5, 6 and 10 would be allowable if amended to include all the limitations of any base claim and any intervening claims.

Applicant has amended the claims in compliance with the agreement reached at the aforementioned interview, which should serve to obviate the prior art grounds of rejection of record. Applicant will advance argument hereinbelow for the record to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

Independent Claim 1 has been amended to incorporate portions of the subject matter of Claim 6. Thus, amended independent Claim 1 defines a diaper with legs as including a sheet of material defining a waist opening and a pair of thigh openings, a front waist arch, a rear waist arch both integral with and extending from waist panels defining the waist opening. The claimed legs are defined as being attached to the thigh openings with each leg comprising a rectangular panel having a front edge, a rear edge, and inner edge joined to the central portion, and a bottom end adapted to form leg openings. Additionally, the claim includes elastic material disposed between the legs and at least a portion of the thigh opening. This elastic feature of Applicant's invention provides a supplementary support in retaining waste matter within the diaper before it reaches the legs and before it can escape the leg openings. New dependent Claim 17 corresponds to the embodiment of Applicant's invention shown in Fig. 3.

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Applicant contends that none of the references cited or relied upon of record, taken alone or in combination, disclose or reasonably suggest a diaper with legs having the combination of structural features defined by the present claims. As discussed at the interview, the primary reference to Kikuchi discloses a disposable diaper having a pair of leg covering portions 5 extending downwardly from a body covering portion 4, (col. 3, lines 7-8), with elastic members 18a, 18b and 18c being disposed at the bottom of each leg opening portion 14, thereby forming leg gathers 19 (col. 4, lines 1-5). The positioning of the elastic members at the leg opening portions are designed to prevent urine and feces from leaking through the leg opening portion (col. 4, lines 13-15). Clearly, Kikuchi's diaper is structurally unrelated to Applicant's presently claimed diaper with legs, which provides elastic material between the legs and the remaining portion of the diaper.

Moreover, the secondary references to Valentin et al. and Weisman et al. fail to supplement the apparent deficiencies of Kikuchi and thus fail to render the presently claimed invention obvious within the meaning of 35 USC §103. Valentin et al., shows an incontinence article having a back guard, and in some embodiments a front guard. The back guard is intended to reach/extend to approximately the middle back area of the user without having to adjust the front portion of the article (pg. 3, [0040]). In most embodiments, the back guard is intended to extend well above the front portion. Thus, one of ordinary skill in the art without the benefit of Applicant's own disclosure would not be capable of arriving at the presently claimed invention by combining the references in the manner suggested by the Examiner. For at least these reasons and for those that form the basis for the agreement reached at the interview, Applicant respectfully submits that independent Claim 1, as

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amended, and corresponding Claims 2-12, as well as new dependent Claim 17 are allowable over the prior art of record.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,



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